

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

also has alleged that he was constructively discharged due to the severity and pervasiveness of Respondents' actions.

2. On October 7, 2009, the Commission entered a default order and referred this case to the Administrative Law Section for a public hearing on damages. The public hearing occurred on May 25, 2010.

3. In 1999, Respondent Town of Cicero hired Complainant as a building inspector. Eventually, Complainant served as a health inspector, also.

4. Complainant is extremely religious. He is a practicing conservative Mennonite and has strong views on, among other subjects, sexual purity. For example, he is strongly opposed to sex outside of marriage.

5. From 1999 until Complainant's resignation in June 2008, Respondents subjected Complainant to frequent insults and teasing regarding sexual matters, including the following:

a. Respondent Mario Lopez, who often referred to Complainant as "Mr. Twinkie" due to Complainant's obesity and eating habits, routinely asked Complainant if he had "expelled [his] cream last night." Respondent Lopez also frequently asked Complainant, "How is your cream this morning?" Complainant understood Respondent Lopez's "cream" references to relate to ejaculation.

b. After Complainant lost weight, Respondent Lopez began referring to Complainant as a "stud muffin."

c. On a weekly basis, Respondent Mike Camp teased Complainant that employees at various Cicero businesses had expressed to Respondent Camp that they had "the hots" for Complainant and wanted to have sex with him.

d. Respondent Frank Zolp teased Complainant about Complainant's training of a new female employee, stating that Complainant had been giving her preferential treatment for sexual favors.

- e. When one of Complainant's neighbors applied for a job with Respondent Town of Cicero, Respondent Zolp asked Complainant if he was "banging her on the side."
 - f. Respondent Lopez often asked Complainant his opinion about how Amish women perform in bed.
 - g. Respondent Lopez often inquired about whether Amish women shave their legs, which Complainant only would have known through sexual relationships with them because Amish women do not expose their legs in public.
- 6. Complainant expressed to Respondents many times that their constant sexual teasing was unwelcome. Complainant also complained to management. No corrective actions were ever taken.
 - 7. Complainant eventually resigned from Respondent Town of Cicero on June 1, 2008 due to the harassment that he endured.
 - 8. As of June 2008, Complainant's annual salary was \$42,000.00.
 - 9. As a result of Respondents' actions, Complainant experienced significant emotional distress.

CONCLUSIONS OF LAW

- 1. Complainant is an "aggrieved party," Respondent Town of Cicero is an "employer," and Respondents Camp, Zolp, and Lopez are "employees" as those terms are defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-103(B), 5/2-101(B), and 5/2-101(A).
- 2. Per the Commission's October 7, 2009 default order, Respondents are liable for violating the Act's prohibition of sexual harassment.
- 3. Complainant has established that he is entitled to a back pay award in the amount of \$101,640.00.
- 4. Complainant has not established that he is entitled to a front pay award.
- 5. Complainant has established that he is entitled to an emotional distress damages award in the amount of \$30,000.00.

6. Respondents should be held jointly and severally liable for Complainant's damages awards.

7. Complainant is entitled to prejudgment interest on his back pay award in accordance with the Act and the Commission's Procedural Rules.

DISCUSSION

A. Liability

Per the Commission's October 7, 2009 default order, Respondents are liable for the sexual harassment alleged in Complainant's charges.

B. Damages

After finding a respondent liable for violating the Act, the Commission may enter an order requiring that respondent to pay damages to the complainant as reasonably determined by the Commission. Muhammad and Prof'l Staffing Servs., IHRC, ALS No. 08-346, March 17, 2009. The purpose of a damages award is to make the complainant whole. Id. Furthermore, it is axiomatic that ambiguities in the calculation of damages must be resolved in favor of the prevailing complainant and against the respondents, as it was the respondents' wrongful actions that gave rise to the uncertainty in the first place. Salto and Audio-Tex Indus., Inc., IHRC, ALS No. 06-472, July 7, 2008. That axiom is particularly true where, as here, the respondents have failed to participate in the case in any way. Id.

Complainant requests a back pay award for the time period from his June 2008 constructive discharge until this Recommended Order and Decision. Complainant testified that his annual salary was \$42,000.00 as of June 2008. (Tr. at 41.) Thus, as of the date of this Recommended Order and Decision, Complainant is 2.42 years removed from his employment with Respondent Town of Cicero. Therefore, Complainant has lost \$101,640.00 in wages during this timeframe (\$42,000.00 times 2.42 years). Also, Complainant has been unsuccessful in finding other employment, and he was still unemployed as of the date of the public hearing. (Id. at 39-40.)

Obviously, since Respondents have not participated in this matter, Complainant's testimony on the issue of back pay stands uncontroverted. Because Complainant's testimony was credible and reasonable, I find that Complainant has established that he is entitled to \$101,640.00 in back pay.

Complainant also seeks front pay from the date of this Recommended Order and Decision until 2016, which is the year in which Complainant expected to retire from the employ of Respondent Town of Cicero but for Respondents' actions. To recover front pay, a complainant must establish that he cannot replace his former income with something comparable (Scoles and Grecian Tavernas, IHRC, ALS No. 10967, May 29, 2001), or that reinstatement is impossible or extremely difficult, rather than simply unpreferred (Banks and Railway Livery & Taxi, Ltd., IHRC, ALS No. 04-033, August 30, 2004). The Commission has noted many times that front pay awards are rare in this forum. See, e.g., Olivas and Carry Cos., IHRC, ALS No. 11482, April 16, 2003.

In this case, Complainant has presented no evidence that he is unable to replace his former income with something comparable. While Complainant did testify that he has struggled to find employment to date, there is no evidence to suggest that he will struggle to find work for six more years. Also, Complainant has presented no evidence that reinstatement would be impossible or extremely difficult in this case. Based on the evidence in this case, and given the Commission's reluctance to award front pay, I find that Complainant has not established that he is entitled to a front pay award.

Complainant also has requested \$250,000.00 in emotional distress damages. When a complainant is awarded back pay, that award is presumed to be sufficient to make the complainant whole. Johnson and Champaign County Sheriff's Dep't, IHRC, ALS No. 9654(S), November 24, 1997. Therefore, to recover emotional distress damages, a complainant must prove that he has experienced emotional distress significantly over and above that which is expected from a violation of the Act. Kleinfeldt and Blackberry Café, IHRC, ALS No. 06-247,

June 13, 2007. Even where a complainant is entitled to an emotional distress damages award, that award must remain "within reasonable parameters." Village of Bellwood Bd. of Fire and Police Comm'rs v. Human Rights Comm'n, 184 Ill. App. 3d 339, 355, 541 N.E.2d 1248, 1258 (1st Dist. 1989). In other words, an award of emotional distress damages must be appropriate in light of the nature and duration of the suffering experienced by the complainant. Smith and Cook County Sheriff's Office, IHRC, ALS No. 1077, October 31, 2005.

Complainant testified in detail about the extent of Respondents' sexual harassment and the suffering that he endured as a result. Complainant was hired by Respondent Town of Cicero in 1999. (Tr. at 9.) Complainant worked as a building inspector and health inspector. (Id. at 9-10.) Complainant has strong religious beliefs. (Id. at 24.) He is a practicing conservative Mennonite. (Id.) As such, he is strongly opposed to sex outside of marriage and sexual promiscuity. (Id. at 25, 36.)

Soon after Complainant was hired, Respondent Lopez, one of Complainant's co-workers, began referring to Complainant as "Mr. Twinkie" due to Complainant's obesity and diet. (Id. at 15.) On a daily basis, Respondent Lopez asked Complainant whether he had "expelled [his] cream last night," and "How is your cream this morning?" (Id. at 15-16.) Complainant understood Respondent Lopez's "cream" references to relate to ejaculation. (Id. at 15.) After Complainant lost weight, Respondent Lopez began calling Complainant a "stud muffin." (Id.)

In addition, Respondents often teased Complainant about the prospect of having casual sexual relationships with other employees or members of the public whose businesses Complainant inspected. For example, on a weekly basis, Respondent Camp, another of Complainant's co-workers, told Complainant that employees of various Cicero restaurants had expressed to Respondent Camp that they had "the hots" for Complainant and wanted to have sex with him. (Id. at 32-33.) Respondent Zolp, the building commissioner and Complainant's supervisor, teased Complainant about Complainant's training of a new female employee, stating that Complainant had been giving her preferential treatment for sexual favors. (Id. at 23.)

Similarly, when one of Complainant's neighbors applied for a job with Respondent Town of Cicero, Respondent Zolp asked Complainant if he was "banging her on the side." (Id.) Casual sexual relationships with co-workers and members of the public were "beyond [Complainant's] contemplation" because of his religious beliefs. (Id. at 32.)

Some of Respondents' sexual teasing directly attacked Complainant's religious beliefs. For example, on a weekly basis, Respondent Lopez asked Complainant whether Amish women shave their legs, which Complainant only would have known through sexual relationships with them because Amish women do not expose their legs in public. (Id. at 26-27.) Respondent Lopez also asked Complainant his opinion about how Amish women perform in bed. (Id. at 26.)

Complainant objected to Respondents' conduct many times. On at least two occasions, Complainant complained to Respondent Zolp's predecessor as building commissioner, Mary Lynn Chalada, about the harassment. (Id. at 17.) Ms. Chalada took no action. (Id.) After Respondent Zolp replaced Ms. Chalada as building commissioner, Complainant sent him a memorandum to complain about the harassment. (Id. at 21-22.) Respondent Zolp took no action. (Id. at 22.) In fact, Respondent Zolp never even mentioned the memorandum to Complainant. (Id.) Complainant also voiced his objections directly to the harassers, but to no avail. (Id. at 25, 34.) Complainant eventually resigned on June 1, 2008 due to the harassment. (Id. at 9, 43.)

Respondents' conduct took a substantial emotional toll on Complainant. Complainant, who lives in Cicero, no longer patronizes the restaurants in town because he is afraid that the employees at those restaurants may view him as sexually promiscuous. (Id. at 35-36.) In fact, Complainant is so concerned about his reputation that he no longer socializes within Cicero at all. (Id. at 37.) In short, Complainant views himself as a prisoner in his own home. (Id. at 38.) Before the harassment, Complainant was very active socially in Cicero. (Id. at 37.)

Complainant battled depression and anxiety during his employment with Respondent Town of Cicero, both of which worsened over time as Respondents' conduct continued. (Id. at

36.) Complainant still suffers from depression and anxiety, and he has received treatment from a psychologist as a result. (Id. at 36-37.) Complainant's anxiety caused his blood pressure to increase to the point that he started taking blood pressure medication, which he takes to this day. (Id. at 38-39.) Furthermore, Complainant has been diagnosed with a permanent psychological disability as a result of the harassment that he suffered. (Id. at 40.)

When a complainant's testimony is credible, the Commission will accept it as a sufficient basis for emotional distress damages. Warzecha and Wis. Tool and Stamping Co., IHRC, ALS No. 04-238, April 22, 2009. I find Complainant's testimony about his ordeal and the emotional distress that he suffered to be highly credible and persuasive. I also find that Complainant's emotional distress significantly exceeded that which is expected from a violation of the Act.

However, recent Commission precedent compels the conclusion that Complainant's requested \$250,000.00 emotional distress damages award is unreasonable. In Busher and Ron Keaton Enters., Inc. d/b/a Irving and Pulaski Shell, IHRC, ALS No. 04-392, March 17, 2009, the Commission awarded \$30,000.00 in emotional distress damages on somewhat similar facts. The complainant in Busher, who was a devout Evangelical Christian, was subjected to a barrage of religious and sexual harassment, which included the following actions by his co-workers and supervisors:

1. They called him "holy-holy" and "preacher man."
2. They asked him about his sex life, including whether he had had sex in the morning before work.
3. They inquired whether he had sex after he prayed.
4. They asked him, in the presence of a customer, "Why don't you give her your hose so you can put some gasoline in it?"
5. They asked him if he had ever touched a woman, performed certain sexual acts, or received a "blow job."

6. They showed him pornographic pictures, including of a woman with her legs spread, and asked him if he liked it.

7. They put his name and the picture of a priest on a bottle of Mr. Clean and left it in the restroom for him to find.

Id.

As in the instant case, the harassment in Busher was severe and pervasive and included active participation by supervisory personnel. Also, as in the instant case, the complainant in Busher experienced significant mental and physiological symptoms due to the harassment. In short, the award in Busher is far more appropriate on these facts than the award requested by Complainant.

Moreover, as discussed above, Complainant is entitled to emotional distress damages only to the extent that his back pay award cannot sufficiently compensate him for his harm. Given the size of Complainant's back pay award, an extra \$30,000.00 in emotional distress damages (for a total actual damages award exceeding \$130,000.00) seems proper in this case. Accordingly, I find that Complainant has established that he is entitled to \$30,000.00 in emotional distress damages.

Finally, as in Busher, Respondents here should be held jointly and severally liable for Complainant's damages awards. In Illinois, when two or more tortfeasors contribute to the same indivisible injury, as is the case here, each individual tortfeasor may be held jointly and severally liable for the entire injury. Woods v. Cole, 181 Ill.2d 512, 518, 693 N.E.2d 333, 336 (Ill. 1998).

C. Prejudgment Interest

Under the Act, Complainant is entitled to prejudgment interest on his back pay award. See 775 ILCS 5/8A-104(J). Complainant's prejudgment interest award is to be calculated as provided in the Commission's Procedural Rules. See 56 Ill. Adm. Code 5300.1140.

D. Reinstatement

I make no recommendation regarding reinstatement as Complainant has not requested reinstatement.

E. Attorney's Fees and Costs

Complainant has submitted no petition for attorney's fees and costs despite being given the opportunity to do so. Accordingly, Complainant is not entitled to attorney's fees and costs.

F. Cease and Desist

In light of the Commission's finding of liability against Respondents, I recommend that the Commission order Respondents to cease and desist from further acts of sexual harassment.

RECOMMENDATION

Based on the foregoing, I recommend that the Commission: 1) award Complainant back pay in the amount of \$101,640.00; 2) award Complainant emotional distress damages in the amount of \$30,000.00; 3) award Complainant prejudgment interest on his back pay award; 4) hold Respondents jointly and severally liable for Complainant's damages awards; and 5) order Respondents to cease and desist from further acts of sexual harassment.

HUMAN RIGHTS COMMISSION

BY: _____

**LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: November 1, 2010